

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SLAWOMIR CELINSKI,

Plaintiff,

v.

JONATHAN A. MIRSKI and
UNI-SYSTEMS, INC.

Defendants.

Case No.: 08 CV 4126

Judge Manning
Magistrate Valdez

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **August 19, 2008** at **11:00 a.m.**, we shall present the attached **Defendants, Jonathan A. Mirski and Uni-Systems, Inc.'s Motion for Leave to File their Motion to Dismiss Counts II and III of Plaintiff's Complaint at Law, instant, before the Honorable United States District Judge Manning in Courtroom 2125 at the United States District Courthouse, Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604.** A true and correct copy of the motion has been served upon you.

/s/ Kevin W. Doherty
Kevin W. Doherty

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been served on:

kdoran@doranmedina.com

j.t.m.moran@gmail.com

by e-filing this **11th** day of **August**, 2008.

/s/ Kevin W. Doherty
Kevin W. Doherty

Kevin W. Doherty (ARDC No.: 3128844)
Brian T. Ginley (ARDC No.: 6281463)
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SLAWOMIR CELINSKI,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 08 CV 4126
)	
JONATHAN A. MIRSKI and)	Judge Manning
UNI-SYSTEMS, INC.)	Magistrate Valdez
)	
Defendants.)	

**MOTION TO DISMISS COUNTS II AND III OF PLAINTIFF'S
COMPLAINT AT LAW**

NOW COME the Defendants, JONATHAN A. MIRSKI and UNI-SYSTEMS, INC., by and through their attorneys, KEVIN W. DOHERTY, BRIAN T. GINLEY, and DOHERTY & PROGAR, LLC, and for their Motion to Dismiss Counts II and III of Plaintiff's Complaint at Law pursuant to Federal Rule of Civil Procedure 12(b)(6), states as follows:

1. The Plaintiff, SLAWOMIR CELINSKI, has filed a three count Complaint at Law against Defendants, JONATHAN A. MIRSKI and UNI-SYSTEMS, INC. In Counts II and III, Plaintiff is seeking recovery against the Defendants for alleged violations of the Family and Medical Leave Act, 29 U.S.C. §2601 *et seq.* (A copy of Plaintiff's Complaint at Law is attached hereto and incorporated herein as Exhibit A).

2. 29 U.S.C. §2611(2)(B)(ii) of the Family and Medical Leave Act provides "the term 'eligible employee' does not include any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50." *See* 29

U.S.C. §2611(2)(B)(ii).

3. That according to the Affidavit of JONATHAN A. MIRSKI, Secretary/Owner of UNI-SYSTEMS, INC., if called upon to testify, he will competently testify to the following salient facts:

- (a) I am currently the Secretary/Owner of Uni-Systems, Inc.;
- (b) I have been the Secretary/Owner of Uni-Systems, Inc. for twenty-one (21) years;
- (c) Uni-Systems, Inc. only has two (2) stores, one (1) located in Glendale Heights, Illinois and one (1) located in Hanover Park, Illinois;
- (d) In 2005, Uni-Systems, Inc. had less than twenty-five (25) employees;
- (e) In 2006, Uni-Systems, Inc. had less than twenty-five (25) employees;
- (f) In 2007, Uni-Systems, Inc. had less than twenty-five (25) employees; and
- (g) In 2008, Uni-Systems, Inc. had less than twenty-five (25) employees. (See Exhibit B, Affidavit of JONATHAN A. MIRSKI).

4. That since UNI-SYSTEMS, INC. employed less than 50 employees while the Plaintiff, SLAWOMIR CELINSKI, was employed by UNI-SYSTEMS, INC., then the Plaintiff is not an “eligible employee” as defined by the Family and Medical Leave Act. See 29 U.S.C. §2611(2)(B)(ii).

5. Therefore, since the Plaintiff is not an “eligible employee,” he cannot maintain a cause against the Defendants for alleged violations of the Family and Medical Leave Act, 29 U.S.C. §2601 *et seq.*

WHEREFORE, the Defendants, JONATHAN A. MIRSKI and UNI-SYSTEMS, INC., pray that this Honorable Court grant their Motion to Dismiss Counts II and III of Plaintiff's Complaint at Law pursuant to Federal Rule of Civil Procedure 12(b)(6) and dismiss *with*

prejudice Counts II and III of Plaintiff's Complaint at Law.

Respectfully submitted,

JONATHAN A. MIRSKI and UNI-SYSTEMS,
INC.

By: /s/ Kevin W. Doherty
Attorney for the Defendants

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